

Voluntary Filing Concept  
by  
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Amend M.C.A. 85-2-406 to allow for exempt rights to be adjudicated by the Water Court as part of certification from a district court.

Under this proposal, should an exempt water right owner wish to have the water right adjudicated by the water court, the owner would petition the district court for certification. This approach would utilize the mechanism already provided in 85-2-406(2). Under this approach if an exempt water right owner wished to have the right enforced on the source of supply the owner of the right would petition the district court for enforcement. The district court would then in turn certify the exempt right to the water court for adjudication. The water court would then conduct proceedings adjudicating the exempt right, including notice to other users as the court would deem necessary similar to the claim amendment notice procedures. Once adjudicated by the Water Court the elements of the right(s) would be returned to the district court.

We consider this approach to have certain advantages over a claim filing mechanism. First, it allows those who own exempt rights a forum to have their rights adjudicated by the water court if they so choose. Second, it avoids forcing exempt water right owners into a claim filing process even if viewed as “voluntary”. Third, it would focus adjudication efforts on those exempt rights which wish to be enforced or administered. Fourth, it would hopefully conserve the resources of DNRC and the Water Court by concentrating any adjudication of exempt rights on those whom voluntarily choose to use the petition process.

One unanswered question with this approach involves where exempt right owners would go for adjudication of their rights once the Water Court is done adjudicating statements of claims for existing water rights? This may require a legislative change in the future to allow for the district court or some other forum to perform such a task, or perhaps the water Court will remain even after claims are finally determined, but this issue will not likely be one for several years to come.

As with all approaches there are likely several details or considerations to be discussed. However, we offer this approach to the group as an option for having exempt rights voluntarily adjudicated by the Water Court